



Department of Justice

FOR IMMEDIATE RELEASE
THURSDAY, DECEMBER 4, 2003
WWW.USDOJ.GOV

CRM
(202) 514-2008
TDD (202) 514-1888

FORMER CEO AND FORMER EXECUTIVE VICE PRESIDENT OF WESTAR INDICTED ON FRAUD, CONSPIRACY CHARGES

WASHINGTON, D.C. – Acting Deputy Attorney General James B. Comey, Jr., U.S. Attorney Eric Melgren of the District of Kansas, and FBI Assistant Director Grant Ashley announced today that the former chief executive officer and a former executive vice president of the Kansas-based Westar Energy, Inc., have been indicted by a federal grand jury on conspiracy, fraud and other criminal charges.

The 40-count indictment, returned by a federal grand jury in Topeka, Kansas, yesterday, charges David C. Wittig, 48, of Topeka, and Douglas T. Lake, 53, of New Canaan, Connecticut, with one count of conspiracy to defraud Westar, 14 counts of circumventing internal accounting controls and falsifying books and records, eight counts of wire fraud, 10 counts of submitting false statements, and six counts of engaging in monetary transactions derived from an unlawful activity. The indictment also seeks forfeiture of proceeds derived from criminal activity.

Wittig and Lake are each scheduled to make their initial appearance on Dec. 30, 2003 at 11 a.m., at U.S. District Court in Kansas City, Kansas, before U.S. Magistrate Judge James P. O'Hara.

Westar is a publicly traded utility company headquartered in Topeka, Kansas, which since 1997 has generated more than \$1 billion in revenue annually. Wittig was hired by Westar in 1995 and Lake joined the company in 1998.

The indictment alleges that during their brief tenure with Westar, the company's stock prices went from a high of \$44 a share to less than \$9. As utility rates soared and debt increased to more than \$3 billion – placing the company on the brink of bankruptcy – Wittig and Lake allegedly received more than \$25 million and \$7 million, respectively, in compensation and benefits. The indictment alleges that Wittig and Lake deprived Westar and its shareholders of the right to honest services and obtained compensation, bonuses and assets under false pretenses from 1995, when Wittig was hired, through 1998, when Lake was hired, until 2002.

“Top executives hold a company in trust for the people who really own it – the shareholders. They are obligated to tell the truth to their shareholders, their boards, and regulators,” said Acting Deputy Attorney General James B. Comey, Jr., the head of President Bush's Corporate Fraud Task Force. “Whether they work on Wall Street or on Main Street, executives who violate that responsibility – and the law – must be held accountable.”

The indictment alleges that Wittig and Lake sought to systematically loot Westar of money and assets; circumvented internal controls, programs and practices designed to insure the accountability for

Westar assets; sought to consolidate all power and authority in themselves in ridding the Board of Directors of Westar of outspoken and independent members, reducing the size of the Board when independent members resigned in protest, reducing management, and conducting investigations and monitoring phone calls of employees to identify employees contacting the press or the Kansas Corporation Commission.

According to the indictment, Wittig and Lake structured a subsidiary, Westar Industries, Inc., to loot assets from the utility and leave debt behind for ratepayers; structured employment agreements with Westar containing "change in control" provisions that allowed Wittig and Lake to dictate the terms and timing under which they left the company while reaping substantial rewards; and hindered the grand jury investigation of their activities including deleting and destroying or attempting to delete and destroy records of Westar.

The indictment further alleges that, as one of the overt acts in furtherance of the conspiracy, Wittig and Lake made systematic use of the corporate aircraft for their personal benefit, while falsely reporting such use as being for business, and caused false corporate reports and false personal and corporate tax returns to be filed. It also alleges that Wittig forbade the company's director of internal auditing from doing an audit on the use of the corporate aircraft.

If convicted, Wittig and Lake each face a maximum of five years in federal prison, without parole, for each count of conspiracy; a maximum of 10 years for each count of circumventing internal accounting controls; a maximum of 20 years for each count of wire fraud; a maximum of five years for making false statements to an agency of the United States; and a maximum of 10 years for each count of engaging in a monetary transaction from property derived from an unlawful activity. A forfeiture count contained in the indictment seeks forfeiture of all the real and personal property traceable to these offenses including approximately \$25 million from Wittig and more than \$7 million from Lake in salary, compensation and benefits paid during their employment at Westar; the Landon Mansion; nearly \$2 million in art and interior furnishing; a 2001 Ferrari; and all remaining stock held by Wittig or Lake of Western Resources, Westar or any affiliated corporation.

"Senior executives have an obligation to manage the publicly traded companies with which they are entrusted in the best interests of the shareholders. To manipulate a company for their own financial interests, as alleged in this indictment, would be a breach of this obligation," said Eric Melgren, U.S. Attorney for the District of Kansas. "The indictment alleges nothing less than theft from innocent shareholders. This type of alleged conduct is not only bad for business, it is illegal and such conduct will be prosecuted like the serious crime it is."

"Working with the Corporate Fraud Task Force and our other partner agencies such as the IRS and SEC, we will continue to devote whatever resources necessary to uncover evidence of impropriety and breaches of integrity that empty the pockets of investors," said FBI Assistant Director Grant Ashley. "At the present time the FBI is investigating 146 large-scale, high-profile and high-loss cases. Each month, we are opening three to six new high-profile cases. Our efforts in this area will continue to be a high priority and our investigations will be thorough and sustained."

The case was investigated by the FBI with assistance of the Internal Revenue Service, Criminal Investigation, and is being prosecuted by Assistant U.S. Attorney Rich Hathaway. The case was brought under the auspices of the Corporate Fraud Task Force, headed by the Deputy Attorney General and created by President Bush in July 2002 to investigate allegations of corruption and fraud at America's corporations.

As in any criminal case, a person charged with a crime is considered innocent until and unless proven guilty. An indictment merely alleges criminal conduct.

#

03-663